

STEPHEN R. HARRIS, ESQ.
Nevada Bar No. 001463
HARRIS LAW PRACTICE LLC
6151 Lakeside Drive, Suite 2100
Reno, NV 89511
Telephone: (775) 786-7600
Facsimile: (775) 786-7764
E-Mail: steve@harrislawreno.com
Attorney for W. Donald Gieseke, Trustee

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

* * * * *

IN RE: CASE NO. BK-19-50103-gs
(Chapter 7)

DORA DOG PROPERTIES, LLC

Jointly Administered with:

- ☐ AFFECTS THIS DEBTOR
- ☐ AFFECTS DOG BLUE PROPERTIES, LLC
- ☐ AFFECTS BRANDY BOY PROPERTIES, LLC
- ☐ AFFECTS 475 CHANNEL ROAD, LLC
- ☐ AFFECTS PARK ROAD, LLC
- ☐ AFFECTS 140 MASON CIRCLE, LLC
- ☒ AFFECTS ALL DEBTORS.

19-50104-gs	Dog Blue Properties, LLC
19-50105-gs	Brandy Boy Properties, LLC
19-50106-gs	475 Channel Road, LLC
19-50108-gs	Park Road, LLC
19-50109-gs	140 Mason Circle, LLC

**MOTION FOR ORDER APPROVING
SETTLEMENT OF DC SOLAR ESTATES
AND FUNDS/INVESTORS' CLAIMS
AGAINST REAL PROPERTY DEBTOR
ESTATES PURSUANT TO FRBP 9019**

Hearing Date: May 5, 2022
Hearing Time: 3:00 p.m.
Est. Time: 15 minutes
Set By: Calendar Clerk

W. Donald Gieseke, the duly appointed and acting trustee ("Trustee Gieseke") for the jointly administered chapter 7 estates of Dora Dog Properties, LLC ("Dora Dog"), Dog Blue Properties, LLC ("Dog Blue"), Brandy Boy Properties, LLC ("Brandy Boy"), 475 Channel Road, LLC ("Channel Road"), Park Road, LLC ("Park Road"), and 140 Mason Circle, LLC ("Mason") (collectively, the "*Real Property Debtors*" or "*Real Property Entities*") Lead Case no. 19-50103-

gs, files his **MOTION FOR ORDER APPROVING SETTLEMENT OF DC SOLAR ESTATES AND FUNDS/INVESTORS' CLAIMS AGAINST REAL PROPERTY DEBTOR ESTATES PURSUANT TO FRBP 9019 ("Motion")**, in order to approve a compromise and settlement with Christina Lovato, the duly appointed and acting trustee (***Trustee Lovato***) for the substantively consolidated chapter 7 estates of DC Solar Solutions, Inc. (***Solutions***), DC Solar Distribution, Inc. (***Distribution***), DC Solar Freedom, Inc. (***Freedom***," and together with Solutions and Distribution, ***DC Solar***) and Double Jump, Inc. (***DJ***," and together with DC Solar, the ***DC Solar Estate***"), in conjunction with the Receivership Funds and the Investors, both as defined hereinafter.

The Motion is supported by the separately filed Declaration of W. Donald Gieseke (***Gieseke Declaration***) and is based on FRBP 9019. As permitted by F.R.E. 201, the Trustee requests that the Court take judicial notice of the Court papers and pleadings on file in the Real Property Debtors' cases and the DC Solar Estate.

FACTUAL BACKGROUND

A. General Background

1. Prepetition, DC Solar was engaged in a business related to manufacturing, marketing, selling and leasing mobile solar generators.

2. However, certain of DC Solar's insiders, including Jeff Carpoﬀ and Paulette Carpoﬀ (***Carpoﬀs***), were also perpetrating a Ponzi scheme (***Carpoﬀ Ponzi Scheme***).¹

3. On December 18, 2018, federal law enforcement raided DC Solar's business locations (***Raid***) effectively closing down DC Solar's operations.

4. In late January and early February 2019, the Debtors, including the four (4) DC Solar Estate cases and the six (6) Real Property Debtors, each filed for chapter 11 relief with this Court, commencing these ten (10) bankruptcy cases (***Bankruptcy Cases***).

¹ See generally, e.g., *U.S.A. v. Carpoﬀ*, Case No. 20-00017 (E.D.Ca.) [ECF No. 10]; Double Jump, Inc. Lead Bankruptcy Case No. 19-50102, ECF No. 106-2.

5. On March 22, 2019, the Court converted the Bankruptcy Cases to cases under chapter 7 and appointed Trustee Lovato to administer the DC Solar estates.² Trustee Gieseke was appointed to administer the Real Property Debtors' estates.

B. The Trustee's Investigation

6. Following his appointment, the Trustee Gieseke engaged in a broad investigation related to the Real Estate Debtors' pre-petition activities. In his investigation, Trustee Gieseke found that, over the course of many years prior to the Raid, the Carpoffs had systematically transferred significant sums of money from Solutions to themselves and to the Real Property Entities. At the time of the Raid, the Real Property Entities owned more than 20 real property assets located in California, Nevada, Texas and Mexico. Most of the real properties were forfeited to the United States and others were available for Trustee Gieseke to administer. As a result of Trustee Gieseke administering the assets available in the Real Estate Debtors, approximately \$12,500,000.00 is on deposit for distribution to allowed creditors' claims in the Real Estate Debtor cases, with additional monies expected.

7. In October 2019, Trustee Lovato filed proofs of claim in the respective Real Property Debtor cases as follows:

Solutions to Dora Dog	\$ 5,028,624.87	Claim 23
Solutions to Dog Blue	\$13,921,974.38	Claim 14
Solutions to Brandy Boy	\$ 1,954,208.48	Claim 7
Solutions to 475 Channel	\$ 815,000.00	Claim 3
Solutions to Park Road	\$ 6,654,212.07	Claim 3
Solutions to 140 Mason	<u>\$ 1,587,278.74</u>	Claim 3
Total	\$29,961,298.54	

On June 22, 2021, Trustee Lovato filed amendments to the above referenced filed proofs of claims, with the indicated claim amounts remaining the same.

² ECF Nos. 439-40.

8. Subsequently, the Funds and the Investors, as defined below, filed claims in the Real Property Debtor cases in amounts exceeding \$2 billion.

C. The Fund And Investor Claims In The Real Property Cases

9. Two previous settlement agreements approved by the Court are integral to this Settlement Agreement.

Global Settlement Agreement

10. In early 2021, Trustee Lovato filed her Motion For Order Approving Compromise And Settlement Agreement And Award Of Contingency Fee (“Global Settlement Motion”). In March 2021, the Court entered its Order approving the Global Settlement Motion. **[Case no. 19-50102-gs, ECF Nos. 2482 and 2614]**. Among other things, the Global Settlement Motion resulted in the Funds³ collectively holding allowed unsecured claims in the DC Solar Estate in the approximate amount of \$336,000,000.

11. In addition, as part of the Global Settlement Motion, the Investors⁴ have allowed unsecured claims in the amount of \$265,000,000; however, the Investors will not receive any distribution from the DC Solar Estate.

Antioch Mini Storage Settlement Agreement

12. In 2021, Trustee Lovato filed three adversary proceedings, the subject of which was the Antioch Mini-Storage, LLC (“AMS”) owned and controlled directly or indirectly by the Carpoffs or persons related to the Carpoffs. Trustee Lovato v. Matthew Carpoff and Lauren Carpoff, Adv. No. 21-05031, Trustee Lovato v. Paula Jordan, Adv. No. 21-05032 and Trustee

³ Funds are defined as Solar Eclipse Investment Funds (“SEIF”) III, LLC; SEIF IV, LLC; SEIF V, LLC; SEIF VI, LLC; SEIF X, LLC; SEIF XI, LLC; SEIF XII, LLC; SEIF XV, LLC; SEIF XVI, LLC; SEIFXVII, LLC; SEIF XVIII, LLC; SEIF XIX, LLC; SEIF XXI, LLC; SEIF XXII, LLC; SEIF XXIII, LLC; SEIF XXIV, LLC; SEIF XXVI, LLC; SEIF XXVIII, LLC; SEIF XXIX, LLC; SEIF XXX, LLC; SEIF XXXI, LLC; SEIF XXXIII, LLC; and SEIF XXXIV, LLC (together, the “**Receivership Funds**”), **acting by and through Receiver Neil Luria;** (2) SEIF Fund VII, LLC, SEIF Fund XIV, LLC, SEIF Fund XXXII, LLC and SEIF Fund XXXV LLC, SEIF Fund VIII and SEIF Fund XXVII (together, the “**East West Bank/ADHI Funds**”), **acting by and through their Manager, Curtis Jung** (collectively, the “Funds”).

⁴ The Investors are Progressive Casualty Insurance Company, The Sherwin-Williams Company, Geico Corporation, People’s United Bank, N.A., People’s United Financial, Inc., DV VNB Community Renewables Fund LLC, DV VNB Community Renewables Fund III LLC, and Pardee Solar 1, LLC (collectively the “**Investors**”).

1 Lovato v..Lone Oak Fund, LLC, Adv. No. 21-05034. Trustee Lovato and the Defendants in these
 2 three adversary proceedings agreed to participate in a settlement conference with Joan Wright,
 3 Esq. acting as the mediator. As a result, all three of the matters were resolved and the settlement
 4 agreement between and among all the parties was approved by the Court. [See case no. 19-50102,
 5 ECF Nos. 3040, 3041 and 3079]. These three adversary proceedings related directly with the
 6 adversary proceeding filed by Trustee Gieseke against the Carpoffs. Trustee Gieseke v. Antioch
 7 Mini Storage LLC, a California limited liability company, Jeff Carpoff, Paulette Carpoff, Lauren
 8 Carpoff and Matthew Carpoff, Adv. No. 21-05015, wherein Trustee Gieseke sought to recover
 9 the Antioch Mini Storage complex from the Carpoffs. Subsequent to the filing, Trustee Gieseke
 10 was successful in recovering the Antioch Mini Storage complex for the benefit of the Dora Dog
 11 estate, with Trustee Lovato and Trustee Gieseke agreeing to a compromise and settlement with
 12 respect to the proceeds arising from the liquidation of the Antioch Mini Storage complex on behalf
 13 of their respective estates. *See Order Granting Plaintiff's Motion for Order Approving*
 14 *Compromise and Settlement with Antioch Mini Storage, LLC, Jeff Carpoff, Paulette Carpoff,*
 15 *Lauren Carpoff, Matthew Carpoff, Trustee Christina Lovato, Paula Jordan, and Lone Oak Fund,*
 16 *LLC* (Case No. 19-50103, ECF No. 625).

20 **Real Property Cases Claims Dispute**

21 13. Informal settlement discussions were had with respect to the magnitude of the
 22 claims asserted by the Funds and Investors in the Real Property Debtor cases. Trustee Lovato
 23 contended that the Funds and the Investors did not have direct claims against the Real Estate
 24 Cases. The Funds and the Investors asserted that they would be able to establish the legal basis
 25 for their direct claims against the Real Estate cases. Trustee Lovato, Trustee Gieseke and the
 26 Funds/Investors agreed to participate in a settlement conference with Judge Natalie Cox acting as
 27 the settlement Judge. Several settlement conferences were held and ultimately a settlement was
 28

1 reached on February 28, 2022, subject to final Court approval.

2 SETTLEMENT AGREEMENT

3 The current Settlement Agreement is attached to the Gieseke Declaration as **Exhibit A**.
 4 Importantly, the Antioch Mini-Storage settlement is part and parcel of the current Settlement
 5 Agreement. From the eventual sale of the Antioch Mini-Storage by Trustee Gieseke, Trustee
 6 Lovato on behalf of the DC Solar Estate will receive \$3 million plus 50% of the net sale proceeds
 7 over \$4 million with a total not to exceed \$4.2 million from that transaction. In addition, Trustee
 8 Lovato will receive an additional \$1 million distribution from the Real Estate Debtor cases.

9 Based upon the magnitude of the claims asserted by Funds in the Real Estate Debtor cases,
 10 Trustee Lovato's total claims of approximately \$30 million represent only a fraction of the total
 11 claims filed by the Funds/Investors in the Real Property Debtors. The proposed settlement
 12 provides certainty to the DC Solar Estate and avoids the risks and costs of potential litigation on
 13 the main question of whether the Funds have direct claims against the Real Estate Debtor cases.
 14 In the exercise of his business judgment, Trustee Gieseke believes the terms of the Settlement
 15 Agreement meet the standards set forth in *In re A& C Properties, Inc.* and is in the best interest
 16 of the Real Property Debtors.

17 DISCUSSION

18 F.R.Bankr.P. 9019(a) provides in relevant part that "[o]n motion ... and after notice and a
 19 hearing, the court may approve a compromise or settlement." In the Ninth Circuit, motions to
 20 approve a compromise and settlement agreement are reviewed under the four criteria set forth in
 21 *In re A&C Properties, Inc.*, 784 F. 2d 1377, 1381 (9th Cir. 1986), cert. denied, 479 U.S. 854
 22 (1986). Those criteria are: (1) likelihood of success on merits of the claims in the underlying
 23 litigation; (2) the complexity of the litigation involved, and the expense, inconvenience and delay
 24 necessarily attending it; (3) the difficulties, if any, to be encountered in the matter of collection;
 25 and (4) the paramount interest of the creditors and a proper deference to their reasonable views in
 26 the premises.

27 Compromises are favored under the Bankruptcy Code, and approval of a compromise rests
 28 in the sound discretion of the Court. Protective Committee for Independent Stockholders of *TMT*

1 *Trailer Ferry, Inc., v. Anderson*, 390 U.S. 414, 424 (1968). The bankruptcy court is afforded wide
 2 latitude in approving compromise agreements which it determines to be fair, reasonable, and
 3 adequate. *In re Woodson*, 839 F.2d 610 (9th Cir. 1988). The court need not conduct an exhaustive
 4 investigation into the claim sought to be compromised. *In re Walsh Construction, Inc.*, 699 F.2d
 5 1325, 1328 (9th Cir. 1982).

6 ***A&C PROPERTIES FACTORS***

7 (1) Likelihood of success on merits of the claims in the underlying litigation with due
 8 consideration for the uncertainty in fact and law, and (2) The complexity of the litigation involved,
 9 and the expense, inconvenience and delay necessarily attending it will be discussed together.

10 When Trustee Lovato filed her claims in the Real Estate Cases, she provided a schedule
 11 of the dates, and amounts, of the transfers by Solutions to the Carpoiffs and the entities which
 12 eventually became debtors. The transfers totaled approximately \$30 million. No objections to
 13 the claims were filed by Trustee Gieseke or any other party.

14 When the Funds filed their claims in the Real Property Cases, the dollar amounts of their
 15 claims were based upon the claims that had been filed in the DC Solar cases. Exhibits to the
 16 claims set forth the legal theories which supported recovery against the Carpoiff owned entities
 17 now designated as the Real Property Debtors. The following theories were listed: Imposition of
 18 a constructive trust; Unjust enrichment; Quantum meruit; Vicarious liability from civil
 19 conspiracy; Conversion; Aiding and abetting fraud; Tortious interference; Civil RICO; Fraud;
 20 Negligent misrepresentation and Imposition of equitable liens.

21 Initially, Trustee Lovato asserted that she had exclusive authority to pursue the actual
 22 funds transferred to the Real Estate Entities through straightforward theories of avoidance under
 23 11 U.S.C. § 544, 548 and 550 and NRS 112.010 et seq.⁵ The conflicting legal theories of Trustee
 24 Lovato and the Funds held the prospect of complex, lengthy and expensive litigation, which
 25 Trustee Gieseke estimates at over \$1,000,000.00 in legal fees alone.

27 ⁵ *Branch Banking and Trust Co. v. R&S St. Rose Lenders, LLC* (In re R&S St. Rose, LLC), 2019 U.S.
 28 Dist. Nev. LEXIS 168395, 2019 WL 4773812; *In re Curry and Sorensen, Inc.*, 57 B.R. 824, 828 (9th
 Cir. BAP 1986).

1 In conjunction with analysis under *A&C Properties* factors (1) and (2) Trustee Lovato
 2 necessarily also considered the relative magnitudes of the claims involved.⁶ For example, if after
 3 liquidation of all assets Trustee Gieseke has a net \$12.5 million available for distribution; the
 4 Funds have allowed claims of \$667,676,527, and Trustee Lovato's claims total \$30 million, the
 5 distribution to Trustee Lovato would be nearly .017934 percent, or \$224,175.00. This number
 6 would be further reduced by the cost of litigation to the DC Solar Estate and the potential delay
 7 of resolution pending appeal(s).

8 Predicting the outcome of litigation under this scenario is always problematic; however,
 9 Trustee Gieseke has taken a conservative view of his risk in determining to settle based upon his
 10 analysis of the facts and the risk of litigation to the Real Property Debtors. Most persuasive to
 11 Trustee Gieseke in settling is that Trustee Lovato has agreed to accept the settlement amount of
 12 \$1,000,000 for the DC Solar Estate. Additionally, the Funds have agreed to accept the net amount
 13 available after Trustee Gieseke pays the allowed administrative claims and up to \$500,000 for
 14 allowed pre-petition claims and the administrative claim of Clark Hill. With this allocation of
 15 funds, Trustee Gieseke has no reason to object to the claims of the Funds.

16 (3) The difficulties, if any, to be encountered in the matter of collection. Here, Trustee
 17 Gieseke will be holding net liquidation proceeds in the form of cash and collectability will not be
 18 an issue. The problem addressed in the Settlement Agreement is the amounts to be distributed to
 19 creditors holding allowed claims.

20 (4) The paramount interest of the creditors and a proper deference to their reasonable
 21 views in the premises. The Motion will be noticed to all creditors and parties-in-interest. If an
 22 objection is raised, the Trustee will address any issues in his Reply. However, as noted above,
 23 based upon the magnitude of the claims asserted by the Funds and the potential cost of litigation,
 24 Trustee Gieseke believes the Settlement to be fair and avoids any downside risk of litigation.

25
 26 _____
 27 ⁶ An additional factor affecting all parties involves whether the Real Property Debtors will, or will not, be
 28 substantively consolidated. In fact, Trustee Gieseke has decided not to request substantive consolidation
 of the Real Property Debtors for a third time, given his first and second requests for substantive
 consolidation having been rejected by the Court.

CONCLUSION

Based upon the foregoing, Trustee Gieseke requests an Order approving the Settlement Agreement attached to his Declaration as Exhibit A and authorizing him to take such steps as are necessary to implement the terms of the Settlement Agreement.

Respectfully submitted this 7th day of April 2022.

STEPHEN R. HARRIS, ESQ.
HARRIS LAW PRACTICE LLC

/s/ Stephen R. Harris

Attorney for W. Donald Gieseke,
Trustee